

**California State Athletic Commission**

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**CALIFORNIA STATE ATHLETIC COMMISSION****Wednesday, October 22, 2008****10:00 A.M. – 11:30 A.M.**

**Ronald Reagan State Building
Auditorium
300 South Spring Street
Los Angeles, California 90013**

Minutes**Commissioners Present:**

Tim Noonan, Chairman
John Frierson
Peter Lopez

Dr. Christopher Giza
Mario Rodriguez

Commissioners Absent:

Howard Rose

June Collison

Staff Present:

Armando Garcia, Executive Officer
Anita Scuri, Legal Counsel, DCA
Bill Douglas

Earl Plowman, Deputy Attorney General
James Maynard, Legal Counsel, DCA

Agenda Item 1. The meeting was called to order by Chairman Tim Noonan at 10:06 a.m. Executive Officer Armando Garcia called the roll. Chairman Noonan and Commissioners Frierson, Giza, Lopez, and Rodriguez were present. Commissioners Collison and Rose were absent.

Agenda Item 2. Appeals of Suspensions and Fines**Antonio Silva**

Mr. Silva was represented by Attorney Howard L. Jacobs and Mr. Alex Davis as his interpreter. Mr. Silva was sworn in by Deputy Attorney General Earl Plowman. Mr. Davis was sworn in by Deputy Attorney General Earl Plowman.

DAG Plowman went through the "Timeline Regarding Antonio Silva" provided to the Commissioner's and Mr. Silva before the hearing. Mr. Plowman also described the licensing and pre-bout physical forms filled out by Mr. Silva, the chain of custody as described in the two laboratory litigation packets, and the intent and text of Commission Rule 303.

Mr. Silva made a statement to the Commission which was interpreted by Mr. Davis. He indicated that he didn't use any substances and can't use any substances. He respects the law but says he can prove he didn't take anything.

Mr. Jacobs questioned the legitimacy of the pre-bout medical questionnaire because the document is in English and Mr. Silva only understands Portuguese and he believes there is no evidence it was translated.

Mr. Davis, Mr. Silva's manager and interpreter was sworn in by DAG Plowman since he would be providing direct testimony.

Mr. Davis indicated that he translated the document for Mr. Silva, which Mr. Silva said "supplements" but Mr. Davis accidentally wrote multiple vitamins and not supplements and didn't realize the answer was an incomplete mistranslation until he saw the form in the meeting package. He stated that Mr. Silva never made specific reference to taking Novodex as one of his supplements in preparation for the bout.

Mr. Jacobs stated that the test that Mr. Silva took in September for anabolic agents was negative when it was sent to Aegis. Mr. Jacobs indicated that the test was not performed to contest the legitimacy of the Quest and WADA test

results but that it was performed to explain and support that the positive test result was caused by ATD found in Novodex. There are two substances that can result in a positive result for boldenone. Boldenone is banned but Novodex is not. Since the half life of boldenone is longer than the half life of ATD, the subsequent negative test result would mean that it was ATD causing the positive result and not boldenone. The Aegis test was just corroborating evidence that the positive boldenone test was the result of ATD (an anti-aromatase agent sold as "Novodex") and not a steroid.

Mr. Jacobs discussed Dr. Black's statement and expertise in the field of anabolic steroid testing. Dr. Black reviewed the ingredient list for Novodex and he assumed Mr. Silva used that supplement, so a foundation has been laid for his opinion. The Office of the Attorney General has the burden of showing the positive test result came from a list of banned substances. Mr. Jacobs noted that the positive test could have been caused by either ATD or boldenone.

Mr. Jacobs claimed that CSAC does not have a prohibited list because it is currently in the rule change process and the revisions to Rule 303 (Administration or Use of Drugs) are not in effect at this time thus we cannot suspend an athlete under the current rules. He further stated that ATD is not listed on WADA's prohibited list even though it is included in the supplement Novodex. Thus, the Commission cannot suspend an athlete for a substance found in a supplement if that substance does not meet the federal definition of a "drug."

It was acknowledged that boldenone is a metabolite of ATD.

Mr. Jacobs stated that if the Commission believes there was an offense, because the rule is vague a reduction in the suspension and fine should be granted. In support of this proposition Mr. Jacobs pointed out that the Rule 303 regulatory changes do provide a banned list including anti-aromatase agents such as Novodex.

Chairman Noonan asked Mr. Silva if he was using Novodex. Mr. Davis translated that Mr. Silva was using Novodex for four weeks prior to the bout.

Commissioner Giza asked Mr. Silva if he had any receipts of proof of purchase of the supplement Novodex. Mr. Silva did not have any proof of purchase for the product Novodex.

Chairman Noonan asked how the Commission could be certain that this sample was actually provided by Mr. Silva.

Mr. Jacobs stated that since it was not an anti-doping test, there was no chain of custody or supervision of the test.

Commissioner Frierson asked how long it took for Mr. Silva's sample to be shipped from point A to point B. Additionally, Commissioner Frierson asked if it was somebody else's urine in the test container.

Mr. Jacobs acknowledged the sample could have been swapped out with someone else's sample because there was no supervision of the test.

Commissioner Giza asked Mr. Silva if he took Novodex at any other time besides the four weeks prior to his bout.

Mr. Davis translated that Mr. Silva never used it before and it was Mr. Silva's prep coach that started him on Novodex.

It was acknowledged that Aegis has a 10 ng/mL cutoff for positive tests whereas Laboratoire de controle du dopage has a 1 to 2 ng/mL cutoff.

Given the differentiation in cutoff levels, Mr. Jacobs acknowledged that a positive test could be generated in a WADA lab whereas the same sample may register negative in a test conducted by Aegis.

Commissioner Giza discussed the level of accuracy for WADA certified labs in relation to nanogram counts.

Mr. Jacobs acknowledged that it is theoretically possible that Mr. Silva had boldenone in his system between 2 and 9 ng/mL and the Aegis test created a "false negative."

Commissioner Rodriguez stated that an athlete needs to take every measure possible to make sure the test is legitimate by having an expert collector administer the test. He further stated these practices should have been employed for Mr. Silva's test that he submitted on his own.

Mr. Jacobs stated the test needed to be performed as soon as possible. Mr. Jacobs stated that the sample was collected in Florida and overnighted to the Aegis lab. The sample was taken without direct observation by a neutral observer that the sample was, in fact, Mr. Silva's.

Commissioner Rodriguez stated that it would not have taken that long to acquire an expert who could collect the sample and provide testimony to the collection of the sample.

Chairman Noonan asked DAG Plowman if he had any comments.

DAG Plowman stated that Rule 303 does not contain a provision that will allow an athlete to be chemically enhanced while in the ring. He asked why someone would be taking something where the contaminants are metabolites of each other. He stated it was for a competitive advantage. He further stated that athletes are responsible for the substances they are using and they have the opportunity to disclose this information on the licensing physical and the pre-bout medical questionnaire. DAG Plowman asked whose benefit it was to allow Mr. Silva to continue competing and answered that it was Mr. Silva's, Mr. Davis', and the promoter's benefit to allow Mr. Silva to keep competing. Lastly, he pointed out that Laboratoire de controle du dopage stated the substances were not natural to the human body and the information that Mr. Silva was taking Novodex was not supplied to the Commission prior to the bout. DAG Plowman acknowledged that CSAC staff followed proper procedures. Finally, DAG Plowman noted that, if ATD produces a boldenone metabolite isn't it possible that ATD can be used as a masking agent to hide illegal boldenone use.

Mr. Jacobs responded to DAG Plowman's statements on three points. He stated that a single injectable dose of boldenone will not metabolize within 40 days. Secondly, ATD metabolizes into boldenone, not the other way around. Lastly, Antonio Silva was taking Novodex for a specific purpose as a supplement and the supplement was found to contain ATD. Mr. Jacobs pointed out that Rule 303 is for banned substances and ATD is not considered a banned substance.

Executive Officer Garcia stated that everyone on the CSAC staff has been trained to ask the proper questions on the pre-bout questionnaire. Now months later, Mr. Silva is allegedly taking Novodex and there is no proof whatsoever that any of the items addressed are actually contained in the supplement or that Mr. Silva actually took the supplement in the first place. Mr. Garcia again reminded the Commission that the supplement was not disclosed on the pre-bout questionnaire even though the document specifically asks what supplements are being taken.

Commissioner Giza asked to address all of the evidence. He noted, as did DAG Plowman that Silva's positive test could have been caused by either the use of boldenone or the use of Novedex (or the use of both). The Commission acknowledged that it cannot be definitively determined whether the positive test was caused by the use of boldenone or the use of Novedex if Silva in fact used Novedex. Commissioner Giza stated that ATD could also be there because the athlete used it as a masking agent to confuse the source of the boldenone. He addressed three issues:

- (1) Whether the licensee took the supplement in question. True, he testified under oath, but he is not unbiased and he has no receipts to show the purchase of Novodex.
- (2) The importance of the chain of custody. There is no chain of custody for the test done at Aegis.
- (3) The level of detection for the two labs is so very different that the negative test result does not establish Novodex as the source of the metabolites.

Chairman Noonan stated that athletes and managers need to be aware of what is actually being consumed and placed in their bodies. He further stated that he struggled with evidence on both sides.

A motion was made, seconded, and carried unanimously to uphold the one year suspension and \$2,500 fine of Antonio Silva for using prohibited substances during competition.

BJ Lacy

Mr. Lacy was sworn in by DAG Plowman.

DAG Plowman stated there is no dispute as Mr. Lacy has admitted use of the drug.

Mr. Lacy spoke to the Commission regarding his family, his change in spirituality, and that he appreciated the opportunity to speak at a special hearing. He further stated that he has missed out on opportunities to earn money since the suspension and that he has learned a very big lesson from this episode. Lastly, he stated he would pay the fine in full and asked for some leniency to allow him to fight on November 8 in Fresno, California.

Chairman Noonan stated that he appreciated Mr. Lacy's honesty.

Executive Officer Garcia stated that he appreciated the honesty and recommended to the Commission to modify Mr. Lacy's suspension to end on November 6 thus removing the final seven days of his 90 day suspension period.

Commissioner Rodriguez stated that he appreciated Mr. Lacy's honesty and was simply interested in doing what is fair and right.

Commissioner Giza stated that he appreciated the honesty and asked Mr. Lacy to take what he has learned from this incident and educate his peers on the danger of using prohibited substances.

Commissioner Lopez stated that he also appreciated the honesty.

Commissioner Frierson stated that he appreciated the honesty but advised Mr. Lacy to be responsible for his actions and take pride in what he does by leaving the drugs behind.

A motion was made, seconded, and carried unanimously to uphold the fine of \$500 and modify the suspension period to end on November 6, 2008.